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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA KENNEDY
PAUL NEWMAN
BRENDA BURNS

Arizona Corporation Commission

DOCKETED

MAR 16 2012

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IN THE MATTER OF THE APPLICATION OF
QWEST CORPORATION D/B/A
CENTURYLINK-QC ("CENTURYLINK") TO
CLASSIFY AND REGULATE RETAIL LOCAL
EXCHANGE TELECOMMUNICATIONS
SERVICES AS COMPETITIVE, AND TO
CLASSIFY AND DEREGULATE CERTAIN
SERVICES AS NON-ESSENTIAL

DOCKET NO. T-01051B-11-0378

NOTICE OF FILING OF DIRECT TESTIMONY

OF

MR. LYNDALL NIPPS

ON BEHALF OF

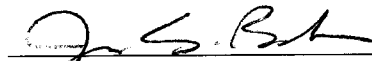
tw telecom of arizona llc

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tw telecom of arizona llc hereby files the attached Direct Testimony of Mr. Lyndall Nipps in the above-captioned proceeding.

RESPECTFULLY SUBMITTED this 16th day of March 2012

By:



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DIRECT TESTIMONY

OF

MR. LYNDALL NIPPS

ON BEHALF OF

tw telecom of arizona llc

March 16, 2012

I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Lyndall Nipps. My business address is 9665 Granite Ridge Drive, Suite 500, San Diego, CA 92123.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by **tw telecom inc.** as its Vice President of Regulatory for the Western Region. My job duties include representing tw telecom at the state level in telecommunications regulatory proceedings, negotiating contracts and licenses, analyzing all types telecommunications data, understanding public policy goals relating to telecommunications, maintaining and updating tariffs, supporting various tw telecom business units, and directing company legislative strategy at the state-level.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I am offering this testimony to clarify certain broad statements made in the Direct Testimony of CenturyLink witness John Brigham. Mr. Brigham asserts that the Arizona telecommunications market is "extremely competitive" (p. 3, l. 17) and "exceptionally competitive" (p. 11, l. 10), however, Mr. Brigham fails to explain that a substantial segment of the competition CenturyLink describes is dependent upon CenturyLink for wholesale services. Mr Brigham's discussion of market competition from Integra, tw telecom, AT&T, XO Communications, Level 3, 360 Networks and Verizon (pp. 35-43 of the testimony), omits any discussion of CenturyLink's role as the wholesale supplier for these competitive providers (pp.

1 35-42). The Arizona telecommunications market is complex and the retail
2 residential and enterprise business markets differ greatly, as do the retail and
3 wholesale markets. This complexity demands that the Commission make
4 regulatory changes using a scalpel, not a meat cleaver.

5 **Q. WHAT IS CENTURYLINK'S ROLE AS A WHOLESALE PROVIDER?**

6 A. Under the Telecommunications Act of 1996, incumbent providers, such as
7 CenturyLink in Arizona, are required to make available for lease to competitors
8 limited network elements. The elements that competitors are entitled to lease
9 have long been part of the public switched telephone network and were, in most
10 instances, installed long before CenturyLink (2011) or Qwest (2000) began
11 providing service. Over the decades, Arizona ratepayers have fully paid for these
12 components of the telecommunications network. CenturyLink is not required to
13 open its entire network to competitors. In fact, new fiber built to the home by
14 CenturyLink is not subject to this leasing requirement, nor is local switching, nor
15 are many transport elements.

16 To promote competition and growth in the Arizona market, CLECs deliver
17 telecommunications services by combining their own networks with wholesale
18 services purchased from CenturyLink. CenturyLink is the dominant provider of
19 wholesale products and services in Arizona. As an example, tw telecom gains
20 access to most businesses in Arizona by leasing from Qwest the local loops to
21 individual businesses and connecting those loops to tw telecom's network.

1 **Q. HOW DOES CENTURYLINK'S ROLE AS THE DOMINANT PROVIDER**
2 **IMPACT COMPETITION?**

3 A. CenturyLink is the dominant provider of wholesale services in Arizona and
4 consequently the success of the CLEC competition cited in Mr. Brigham's
5 testimony may be adversely impacted by CenturyLink. CenturyLink's
6 dominance in the wholesale market is clearly established. In March, 2010, the
7 Arizona Commission filed comments with the FCC in response to Qwest's
8 request for forbearance in the Phoenix MSA.¹ In those comments, the Arizona
9 Commission advised the FCC that viable wholesale alternatives were not yet
10 available in the Phoenix MSA:

11 **Viable Wholesale Alternatives are Not Available Yet.**

12 The FCC found in its *Qwest 4 MSA Order* that "[t]he record does
13 not reflect any significant alternative sources of wholesale inputs
14 for carriers in the four MSAs [including the Phoenix MSA]." The
15 data collected by the ACC Staff indicates that nothing has changed
16 in this regard.²

17 The Commission specifically found that "alternative last mile facility providers
18 are not an option yet for much of the Phoenix MSA business community."³ The
19 availability of alternate wholesale providers has not change in Arizona. tw
20 telecom still purchases the vast majority of its wholesale products from Qwest.

¹ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 USC § 160(c) in the Phoenix Metropolitan Statistical Area*, WC Docket No. 09-135, Reply Comments of the Arizona Corporation Commission, March 2, 2010.

² *Id.* at p. 23 (footnote deleted).

³ *Id.* at p. 22.

1 **Q. DOES CENTURYLINK HAVE AN ONGOING OBLIGATION TO MAKE**
2 **WHOLESALE SERVICES AVAILABLE?**

3 A. Yes. Under Section 251 of the Telecommunications Act of 1996, CenturyLink, as
4 an incumbent provider, is required to make unbundled network elements available
5 to CLECs at its Total Element Long-run Incremental Cost ("TELRIC"). *See* 47
6 C.F.R. §51.505(b). TELRIC Rates are essentially a wholesale price. Following
7 passage of the Act, incumbent carriers offered CLECs special access services
8 based on tariff pricing as a substitute for individual network elements. Most
9 Arizona CLECs purchase these special access services from CenturyLink,
10 however, the availability of unbundled network elements (at wholesale rates)
11 discipline the special access rates by creating "a constraining influence" on the
12 incumbents ability to increase special access services rates.⁴

13 **Q. WHAT PROTECTS COMPETITOR ACCESS TO WHOLESALE**
14 **SERVICES GOING FORWARD?**

15 A. As described above, the Act requires the continued availability of wholesale
16 elements and services under Section 251. Additionally, CenturyLink is bound by
17 its recent merger case settlement agreement to maintain certain wholesale pricing
18 for tw telecom at existing rates until May 31, 2013.⁵

⁴ *In the Matter of Unbundled Access to Network Elements*, Order on Remand, 20 F.C.C.R. 2533 (2005).

⁵ Docket No. T-1051B-10-0194; *Settlement Letter* dated February 4, 2011 and filed with the Commission February 8, 2011.

1 **Q. WHAT BEARING DOES WHOLESALE SERVICES HAVE ON**
2 **CENTURYLINK'S APPLICATION TO CLASSIFY LOCAL RETAIL**
3 **SERVICES AS COMPETITIVE?**

4 **A.** CenturyLink maintains that it is entitled to competitive classification of local
5 retail services because the market is fully competitive. However, CenturyLink
6 has introduced almost no objective evidence that the market is fully competitive,
7 nor does CenturyLink's application recognize the complexities of the many, many
8 different markets -- all of which vary by customer type, geographic location,
9 product type and the availability of competitive alternatives. CenturyLink's
10 assertions about competition are misleading if the Commission does not fully
11 understand that the CLEC competition cited by CenturyLink could be unilaterally
12 undercut by CenturyLink in many different ways.

13 **Q. HOW CAN THE COMMISSION CONTINUE TO FOSTER AN**
14 **ENVIRONMENT THAT CREATES A FAIR PLAYING FIELD AND**
15 **PROMOTES COMPETITION?**

16 **A.** The Commission should not approve any rate deregulation (or classify any
17 services as competitive) without ensuring the following protections are in place:

- 18 1. Review hard-data relating to the true availability of retail competition
19 for specific geographic areas that are the subject of CenturyLink's
20 application.
- 21 2. Quickly address and resolve any complaints of anti-competitive
22 behavior relating to wholesale sales and services including any
23 Operational Support System ("OSS") disputes.

1 3. Investigate all reports of possible cross-subsidization between
2 CenturyLink affiliates and strictly enforce the Commission's
3 prohibition against cross-subsidization which provides that "a
4 competitive telecommunications service shall not be subsidized by any
5 rate or charge for any noncompetitive telecommunications services."
6 A.A.C. R14-2-1109(C)

7 4. Continue to require transparency and vigilance in the reporting and
8 tariffing processes, which includes retaining CenturyLink's current
9 reporting and performance obligations relating to wholesale services.
10

11 **II. OTHER ISSUES**

12
13 **Q. SHOULD CENTURYLINK CONTINUE TO COLLECT STATE OR**
14 **FEDERAL SUBSIDIES AND HAVE FULL RETAIL DEREGUATION?**

15 **A.** No. CenturyLink collects millions in government subsidies for Arizona every
16 year. Federal subsidies are designed to reduce the amount paid by customers for
17 service in high cost areas. No incumbent should have pricing flexibility *and also*
18 continue to collect millions in subsidies for those services. Either the subsidies
19 should be reduced or pricing should continue to be regulated in areas where
20 subsidies are provided.

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 **A.** Yes, it does.